SUPREME COURT OF THE UNITED STATES.

No. ~~168.~~ 94.

EVANS ROGERS, PLAINTIFF,

vs.

THE CITY OF KEOKUK.

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

GOVERNMENT PRINTING OFFICE.

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United States of America, district of Iowa.

EVANS ROGERS
v.
THE CITY OF KEOKUK.

At a circuit court of the United States begun and holden at Des Moines, for the district of Iowa, on Tuesday, the twelfth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and in the eighty-seventh year of American independence—present, Hon. Sam'l F. Miller, circuit judge; Hon. J. M. Love, district judge, came on for hearing the above cause of

EVANS ROGERS
v.
THE CITY OF KEOKUK.

State of the pleadings.

For the purpose of abbreviating the record, which is very lengthy, in the above-entitled cause, the following statement of facts is agreed upon by and between the plaintiff and defendant, to wit:

2 The plaintiff, Evans Rogers, a citizen of the State of Pennsylvania, brings his action against the city of Keokuk, a municipal corporation existing under and by virtue of the laws of the State of Iowa, upon nine hundred and seventy-two (972) certain coupons hereinafter specified, to wit: Upon nine (9) coupons of forty dollars each, attached to each of fifty bonds of one thousand dollars each, being for the semi-annual instalments of interest at eight per cent. per annum upon said bonds, and payable, respectively, July 1st, 1858, January 1st, 1859, July 1st, 1859, January 1st, 1860, July 1st, 1860, January 1st, 1861, July 1st, 1861, January 1st, 1862, and July 1st, 1862, and numbered, severally, 5, 6, 7, 8, 9, 10, 11, 12, and 13. The said bonds to which the said coupons were attached were numbered as follows, to wit: Nos. 286, 287, 288, 289, 290, 299, 300, 301, 302, 303, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 342, 343, 344,
3 345, 346, 347, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386. A similar series of coupons attached to each of the said bonds is declared upon by the plaintiff.

The following is a copy of one of the said bonds and of one of the coupons sued on. The others are similar, except as to the number and when payable:

Copy of bond.

No. 331.] UNITED STATES OF AMERICA,
State of Iowa, City of Keokuk.

Eight per cent. railroad bond, issued under an ordinance of the city of Keokuk, providing for the subscription to the capital stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company, passed on the twentieth day of November, A. D. 1855, under the authority of an act of the general assembly of the State of Iowa, amending the charter of the said city, approved Jan'y 22, A. D. 1853.

Know all men by these presents, that the city of Keokuk, in the State of Iowa, a body corporate and politic, owes to the Keokuk, Fort Des
4 Moines and Minnesota Railroad Company the sum of one thousand dollars, which sum the said city promises to pay to the said railroad com-

pany, or to the holder thereof, on the first day of January, eighteen hundred and seventy-six, at the Continental Bank, in the city of New York, with interest thereon, computing from the first day of January, eighteen hundred and fifty-six, at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July in each year, until the said principal sum shall be paid, on presentation of the annexed interest coupons, respectively, at the places therein designated.

For the redemption of this obligation at maturity, and the payment of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; secondly, the stock in the Keokuk, Fort Des Moines and Minnesota Railroad Company, subscribed for by the said city of Keokuk
5 under authority of the city of Keokuk above recited, to provide for the payment of which a series of bonds of said city of Keokuk, of which this is one, amounting in the whole to the sum of four hundred thousand dollars, the amount of said subscription has been issued to said railroad company, and the profits, accumulations and dividends on said stock; thirdly, the taxes levied and to be levied and collected on all the property, real and personal, subject and to become subject to taxation within said city of Keokuk.

And the said city of Keokuk further agrees and stipulates with the said railroad company and whosoever may become the holder of this obligation, that this obligation and the interest coupons annexed, when due, shall be received in payment for taxes and all other dues to the city; and further, that the holder of this obligation shall have the right, at any time within ten years from the date hereof, to exchange the principal of this obligation for stock in the said railroad company at par, and the said city of Keokuk shall be and is irrevocably
6 bound to transfer to the holder hereof stock of said railroad company, on demand of the holder hereof, or his, her, or their agent or attorney, within the time specified for an amount equal at its par value to the principal which may be due hereon at the time of such demand upon the surrender of this bond and the unpaid coupons, to the city; and further, that the said stock subscribed for as aforesaid in said railroad company shall be sacredly set apart and preserved for the redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and shall not be used otherwise for any other purpose while any of said obligations are outstanding; and the city of Keokuk further agrees and stipulates that this obligation, with all the rights and benefits arising therefrom, may be transferred by general or special endorsement or by delivery, as if the same were a note of hand payable to bearer.

7 In testimony whereof, the said city of Keokuk, acting by and through its duly constituted and authorized government and officers, and for this purpose fully empowered, has caused its corporate seal to be hereunto affixed and attested by its city recorder, and these presents to be subscribed by the mayor of the city.

[L. S.] This done at the city of Keokuk, in the State of Iowa, this first day of January, 1856.

D. W. KILBOURNE, *Mayor.*
R. S. NEWMAN, *City Recorder.*

For value received, the Keokuk, Fort Des Moines and Minnesota Railroad Company doth hereby assign and transfer to ———, or bearer, and guaranty the payment of the principal and interest therein stipulated.

Keokuk, Jan. 1st, 1856.

By order of the board of directors.

H. T. REID, *President.*
WILLIAM LYTTLETON, *Secretary.*

Copy of a coupon.

$40. KEOKUK, IOWA, *January 1st*, 1856.

8 The treasurer of the city of Keokuk will pay to the bearer, at the Continental Bank, in the city of New York, on the first day of July, 1858, forty dollars, interest due on bond No. 331.

D. W. KILBOURNE, *Mayor.*

$40. KEOKUK, IOWA, *January 1st*, 1856.

The treasurer of the city of Keokuk will pay to the bearer, at the Continental Bank, in the city of New York, on the first day of January, A. D. 1859, forty dollars, interest due on bond No. 331.

D. W. KILBOURNE, *Mayor.*

Also, upon nine coupons of forty dollars each, and numbered from 5 to 13 inclusive, bearing date March 1st, 1856, and payable, respectively, September 1st, 1858, March 1st, 1859, September 1st, 1859, March 1st, 1860, September 1st, 1860, March 1st, 1861, September 1st, 1861, March 1st, 1862, and September

9 1st, 1862, attached to each of fifty-eight bonds, being for the semi-annual instalment of interest upon bonds of even date therewith for one thousand dollars each, and numbered, respectively, as follows, viz: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 67, 68, 69, 71, 72, 73, 74, 75, 80, 81, 82, 83, 84. A similar series of coupons was attached to each of said bonds.

The following is a copy of one of the said bonds and of one of the coupons sued on. The others are similar, except as to the numbers.

Bond to the K. M't P. and Mus. R. R. Co.

Exhibit 2d.

UNITED STATES OF AMERICA,

State of Iowa, City of Keokuk.

Eight per cent. railroad bond, No. 15, issued under $1,000.

An ordinance of the city of Keokuk, providing for the subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed on the fifth day of February, A. D. 1856, under the authority of

10 an act of the general assembly of the State of Iowa, amending the charter of the said city, approved January 22d, 1853.

Know all men by these presents, that the city of Keokuk, in the State of Iowa, a body politic and corporate, owes to the Keokuk, Mount Pleasant, and Muscatine Railroad Company the sum of one thousand dollars, which sum the said city promises to pay to the said railroad company, or to the holder hereof, on the first day of March, eighteen hundred and seventy-six, at the Continental Bank, in the city of New York, with interest thereon, computing from the first day of March, eighteen hundred and fifty-six, at the rate of eight per cent. per annum, payable semi-annually, on the *on the* first days of March and September in each year, until the said principal sum shall be paid, on presentation of the annexed interest coupons, respectively, at the place therein designated.

For the redemption of this obligation at maturity, and the payment

11 of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; secondly, the stock in the Keokuk, Mount Pleasant, and Muscatine Railroad Company, subscribed for by the said

city of Keokuk, under authority of the city of Keokuk above recited, to provide for the payment of which a series of bonds of the said city of Keokuk, of which this is one, amounting in the whole to the sum of one hundred thousand dollars, (the amount of said subscription,) has been issued to said railroad company, and the profits, accumulations, and dividends on said stock; thirdly, the taxes levied and to be levied and collected on all the property, real and personal, subject and to become subject to taxation within said city of Keokuk. And the said city of Keokuk further agrees and stipulates with the said railroad company, and whosoever may become the holder of this obligation, that this obligation and the interest coupons annexed when due shall be received in payment for taxes and all other dues to the city; and further, that the holder of
12 this obligation shall have the right, at any time within ten years from the date hereof, to exchange the principal of this obligation for stock in the said railroad company at par; and the said city of Keokuk shall be, and is, irrevocably bound to transfer to the holder hereof stock of said railroad company on demand of the holder hereof, or his, her, or their agent or attorney, within the time specified, for an amount equal at its par value to the principal which may be due hereon at the time of such demand, upon the surrender of this bond and the unpaid coupons to said city; and further, that the stock subscribed for as aforesaid in said railroad company shall be sacredly set apart and preserved for the redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and shall not be used otherwise for any other purpose while any of said obligations are outstanding. And the city of Keokuk further agrees and stipulates that this obligation, with all the rights and benefits arising therefrom, may be transferred by
13 general or special indorsement, or by delivery, as if the same were a note of hand, payable to bearer.

In testimony whereof, the said city of Keokuk, acting by and through its duly constituted and authorized government officers, and for this purpose fully empowered, has caused its corporate seal to be hereunto affixed and attested by its city recorder, and these presents to be subscribed by the mayor of the city.

[L. S.] This done at the city of Keokuk, in the State of Iowa, the first day of March, 1856.

D. W. KILBOURNE, *Mayor.*
B. S. MERRIAM, *City Recorder.*

For value received, the Keokuk, Mount Pleasant, and Muscatine Railroad Company doth hereby assign and transfer the above bond to ——, or bearer, and guaranty the payment of principal and interest therein stipulated.

Keokuk, March 1st, 1856.

By order of the board of directors.

LAUREN DEWEY, *President.*
C. NASH, *Secretary.*

14 $40. KEOKUK, IOWA, *March 1st,* 1856.

The treasurer of the city of Keokuk will pay to the bearer, at the Continental Bank, in the city of New York, on the first day of September, 1858, forty dollars, interest due on bond No. 15.

D. W. KILBOURNE, *Mayor.*

The defendant, the city of Keokuk, pleaded, in substance, as follows:

1st. Admitted that she was, at the date of the issuing of the coupons sued on, a municipal corporation, existing under and by virtue of the laws of Iowa, creating her charter.

2d. Denied that she executed the said bonds or coupons; denied that the same were or are the act and deed of the said city of Keokuk.

3d. Denied that she is indebted to the plaintiff in manner or amount claimed, or in any other manner or amount.

4th. Denied that D. W. Kilbourne, who signed the said coupons as mayor, and S. B. Merriam, who countersigned the same as recorder of the said
15 city, had any authority to sign, execute, or issue the same, and that the same were executed and issued in fraud upon the rights of this defendant, and are and were fraudulent and void.

5th. Denied that there was any law authorizing the issue of the said bonds or coupons by the proper officers of the city of Keokuk.

6th. Denied that the legislature of the State of Iowa had any power or authority under the constitution of the State of Iowa, or from any other source, to make, enact, or pass any law authorizing the city of Keokuk or the proper officers thereof to make, execute, or issue the said bonds or coupons.

7th. Averred that the said bonds and coupons were made and issued by the *by the* said mayor and recorder of the city of Keokuk, and by them delivered—a part of them to the Keokuk, Fort Des Moines, and Minnesota Railroad Company, and a part to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, for the purpose of aiding the said railroad companies in build-
16 ing two railroads from the city of Keokuk, one of them to the city of Fort Des Moines, and thence to the south boundary of the State of Minnesota, and the other to the city of Mount Pleasant, and thence to the city of Muscatine, in the State of Iowa, and for no other purpose or intent, and that the same were not executed or issued for any municipal purpose.

8th. Defendant also averred that no subscription was ever made by the city of Keokuk to the capital stock of the said railroad company, and that no consideration was ever received by the said city for the said bonds or coupons.

9th. Defendant also pleads other matters of fact and grounds of defence which it is not necessary to copy here, it being stipulated and agreed by and between the said parties that the city of Keokuk shall be permitted to give in evidence any matter of fact, and urge and avail herself of any matter of general, constitutional, or statutory law, both in the circuit and Supreme Court of the United States, which might be urged in defence against the plaintiff's claim under
17 any plea, demurrer, or answer which might have been filed by the defendant, the city of Keokuk.

To which, under the rules of practice in this court, no replication is or can be filed, but the plaintiff has leave to urge and prove any matter of fact or law as fully as he might do at common law under a general or special replication.

And thereupon the parties came into court and filed the following facts found in the case, and stipulated that the same should be taken and treated as the special verdict of a jury in the cause, namely:

The following facts are agreed upon to be treated as the special verdict of a jury:

1st. The plaintiff purchased the coupons declared upon in open market, for value, before maturity.

2d. The coupons were attached to and represented the semi-annual instalments of interest at eight per cent. per annum upon the bonds hereinbefore described, and the said bonds and coupons were executed by the proper
18 officers of the city of Keokuk, as they purport upon their face, in accordance with a resolution or ordinance of the city council of said city, after a vote taken by the people of the said city as prescribed by law, and were delivered; the first described fifty bonds, and the coupons attached thereto, to the Keokuk, Fort Des Moines, and Minnesota Railroad Company; and the last described fifty-eight bonds, and the coupons attached, were delivered to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, which said rail-

road companies are private corporations created for pecuniary profit and emolument, and for the construction of railroads without the limits of said city, as stated in defendant's answer.

3d. That the following are the only laws of the State of Iowa creating or amending the charter of the said city of Keokuk, or purporting to authorize the proper officers of the said city to execute the said railroad bonds and coupons, or deliver the same to the said railroad companies, or to legalize the said
19 bonds after they were issued—that is to say:

Charter of the city of Keokuk.

AN ACT entitled "An act to incorporate the city of Keokuk."

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That all that part of the fractional township number sixty-five (65) north, of range four (4) west of the fifth principal meridian, in Lee county, in this State, and of township sixty-five north, of range five (5) west of the said meridian, in said county, embraced within the boundaries or limits of the town of Keokuk, according to the plat of the said town now on record in the recorder's office of said county, shall be, and is hereby declared to be, a city, and the inhabitants thereof are hereby created a body corporate and politic, with perpetual succession, by the name and style of the city of Keokuk, and as such, by that name, shall be capable in law of contracting and being contracted with, of suing
20 and being sued, pleading and being impleaded, answering and being answered unto, in all courts and places, in all matters whatsoever; also of purchasing, using, occupying, enjoying, and conveying real, personal, and mixed estate, and may have and use a corporate seal, and may change, alter, and renew the same at pleasure; and shall be competent to have, exercise, and enjoy all rights, immunities, powers, and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation. And for the better ordering and governing of said city, the exercise of the corporate powers of the same hereby and herein granted, and the administration of its fiscal, prudential, and municipal concerns, with the conduct, direction, and government thereof, shall be vested in a mayor and aldermen, consisting of seven members, to be denominated the city council, together with such other officers as are hereinafter mentioned and provided for.

21 SEC. 2. The said city shall be divided into three wards, as follows, to wit: that portion lying between the Mississippi river and the centre of Third street, in said city, and bounded on the southwest by a line drawn from the said river to the centre of the said Third street, between, parallel to, and at equal distances from, Maine and Johnson streets, in said city, shall be the first ward; that portion lying between the said river and the centre of Third street aforesaid, and bounded on the northwest by the line aforesaid, shall be the second ward; and that portion lying between the centre of Third street aforesaid, and the northwestern limit or boundary of the city, shall be the third ward: *Provided,* That the said city council of the said city may change, unite, or divide the said wards, or any of them, whenever they shall think it necessary or proper.

SEC. 3. That the said city of Keokuk shall be, and hereby is, invested as the lawful owner and proprietor, with all the real, personal, and mixed
22 estate, and all the rights and privileges thereof, together with all the property, funds, and revenues, and all moneys, debts, accounts, and demands due and owing, or in anywise belonging, to said city, or which, by or under the authority of any former act or acts have been acquired, vested in, or is or may be owing or belonging to the city of Keokuk, together with all rights, interests, claims or demands in favor of or against said city, may be continued, prosecuted, defended and collected in the same manner as though this act never been passed.

SEC. 4. That the qualified electors of said city shall, on the first Monday in April, anno Domini eighteen hundred and forty-nine, and annually on the same day thereafter, elect a mayor, who shall have resided in said city one year, and the qualified electors of said city shall at the same time elect six aldermen, who shall have resided in said city one year; and the mayor
23 and aldermen so elected, when assembled together and duly organized, shall constitute the city council, a majority of whom shall be necessary to constitute a quorum for the transaction of business; they shall be the judges of the election, returns, and qualifications of their own members, and shall continue in office for the term of one year, and until their successors shall be chosen and qualified. They shall determine the rules of their proceedings and keep a journal thereof, which shall be open to the inspection and examination of every citizen, and may compel the attendance of absent members in such manner and under such penalties as they may prescribe; and they shall meet at some convenient place in said city on the second Monday of April, and after taking the oaths of office before some officer qualified to administer oaths, shall elect from their own body a president pro tempore.

SEC. 5. The city council, when convened on the second Monday of
24 April, shall proceed to elect a recorder, who shall attend all meetings of the said council and keep a record of all their proceedings; shall keep the corporate seal, and perform such other duties as the said council shall ordain and prescribe. They shall also appoint an assessor, a marshal, and collector, and treasurer of the said city, and such other subordinate officers as they shall think necessary and proper. The council shall define the duties of the several officers appointed or elected by the said council, subject to the provisions of this act; shall fix the nature and amount of compensation for their services, and shall require such security as they shall deem proper for the faithful discharge of the duties of their several offices.

SEC. 6. That in all elections for city officers it shall be the duty of the mayor to issue a proclamation to the qualified voters of said city, setting forth the time of such elections, the place or places where the same shall be holden, the officer and officers to be chosen, and cause such proclamation to be
25 posted up in three of the most public places in said city at least ten days previous to such election. And every such election shall be opened between the hours of eight and ten o'clock in the forenoon, and continued open until four o'clock in the afternoon, and shall in all things be conducted agreeably to the laws regulating township elections for the time being. And it shall be the duty of the judges of said election, within two days thereafter, to make and direct the returns thereof to the mayor of said city, at his office, in the same manner that election returns are required to be made by the township trustees for the time being: *Provided*, that in all the elections for mayor the return shall be made and directed to the president pro tempore of the city council; and the mayor or president pro tempore of the council, as the case may be, shall, within five days after any such election, open the returns which shall have been made as aforesaid, and shall make an abstract of all the votes and file the same with the city recorder, who shall make a record thereof in a book to be kept by him for that purpose, and the person or persons
26 having the highest number of votes shall be declared duly elected; but if, from any cause, the qualified voters of said city, or any of the respective wards, as the case may be, should fail to effect any election at the time and in the manner herein provided, the mayor shall forthwith issue his proclamation for a second or other election, which in all things shall be notified, conducted, regulated, and the returns thereof made, as in this act is prescribed. And the person or persons who shall be chosen at any such second or other election shall hold their offices until the next ensuing annual election, and until their successor or successors in office shall be elected and qualified. And it shall be

the duty of the mayor or president pro tempore of the city council immediately to notify such person or persons who may be elected as aforesaid of his or their election, by causing a written notice thereof to be served upon him or them by the city marshal. And every person so chosen or elected as aforesaid shall, within ten days after his election, cause himself to be qualified to enter upon the duties of his office, and in default thereof the office to which he
27 shall have been elected shall be deemed and considered in law to be vacated. And it shall be the duty of the city council to prescribe the time and manner, and provide the place or places of holding all elections in said city for city officers, and of making the returns thereof not herein otherwise directed and prescribed. And the said city council shall appoint judges and clerks for all city elections.

SEC. 7. That each and every white male citizen above the age of twenty-one years, who shall have been a resident in said city six months immediately preceding any election for city officers, shall be deemed a qualified voter of said city, and shall be entitled to vote in the same, or in the ward where he may reside, for mayor, aldermen, and such other officers as are in and by this act directed to be chosen by the qualified voters of said city, or of their respective wards therein, and all others which by public ordinance may be required to be chosen or elected. And when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be
28 challenged by an elector who has previously given his vote at such election, the judge of said election shall tender to such person an oath or affirmation in the following form, to wit: I, A B, do solemnly swear (or affirm, as the case may be) that I am a citizen of the United States, and that I have been a resident of this city six months immediately preceding the election; am a resident of this ward, (if wards have been established,) and to the best of my knowledge and belief have attained the age of twenty-one years, and that I have not voted at this election.

SEC. 8. That no member of the city council shall be eligible to any office within the gift of the city council during the year for which he may have been elected, nor shall any member of the city council be interested, directly or indirectly, in the profit of any contract or job for work or services to be performed in the city.

SEC. 9. That the mayor shall sign all by-laws and ordinances adopted and passed by the city council, and see that the same are published six days
29 before they go into effect. He shall preside when present at the meetings of the city council, and be denominated president of the same, and when there is a tie shall give the casting vote. He shall do and perform such other duties as the city council may prescribe and determine, not inconsistent with the provisions of the charter.

SEC. 10. That the recorder, assessor, marshal, and collector and treasurer, and all other officers under the government of said city, shall, before entering upon the duties of their respective offices, take an oath or affirmation to support the Constitution of the United States and of this State, and faithfully and impartially to perform the duties of their several offices to which they may have been respectively elected or appointed, and when required shall give such bond to the city, with good and sufficient security, in such sum or sums, and with such conditions thereto, as the city council may from time to time direct, and in all cases not herein provided for, shall respectively be allowed and receive such fees and compensation for their services, and be liable to such fines,
30 penalties, and forfeitures for negligence, carelessness, misconduct in office, and positive violation of duty, as the said city council shall order and determine; and it shall be the duty of the said recorder to keep the seal of said city, and all the records, papers, and official documents thereto belonging.

He shall keep fair books wherein shall be kept the accounts of the city; attest all orders issued by the city council for the payment of money, and enter the same in numerical order in a book to be kept for that purpose, and shall perform such other duties as shall be required of him by ordinance.

SEC. 11. That the city council shall provide for the times and places of holding their meetings not herein otherwise provided for, which shall at all times be open to the public; they shall provide by ordinance for the election by the qualified voters of said city of such other city officers, whose election is not herein otherwise provided for, as shall be necessary for the good government of said city, and the due exercise of its corporate powers, and which
31 shall have been provided for by ordinance; all city officers whose term of service is not prescribed and whose powers and duties are not defined in and by this act shall perform such duties, exercise such powers, and continue in office for such term of time, not exceeding one year, as shall be prescribed by ordinance.

SEC. 12. That whenever the office of mayor, councilmen, treasurer, marshal, recorder, or any other office in and by this act specified and provided for, shall become vacant by death, resignation, removal from the city, or otherwise, it shall be the duty of the council, as soon as may be, to appoint some suitable person having the requisite qualifications to fill such vacancy, and the person so appointed shall continue in office during the remainder of the term for which his predecessor was elected; and in case of the sickness or temporary absence of the mayor, the duties of his office, during such sickness or
32 temporary absence, shall be discharged by the president pro tempore, who shall be obeyed and respected accordingly.

SEC. 13. That the said city council shall have power, and it is hereby made their duty, to make and publish from time to time all such ordinances as shall be necessary to secure said city and the inhabitants thereof against injuries by fire, thieves, robbers, burglars, and all other persons violating the public peace; for the suppression of riots and gambling, and indecent and disorderly conduct; for the punishment of all lewd and lascivious behavior in the streets and other public places in said city. They shall have power, from time to time, to make and publish all such laws and ordinances as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of said city and the inhabitants thereof; to impose fines, forfeitures, and penalties on all persons offending against the laws and ordinances of said city, and provide for the
33 prosecution, recovery, and collection thereof, and shall have power to registrate by ordinance the keeping and sale of gunpowder within the city.

SEC. 14. That the city council shall have power to establish and organize all fire companies and provide them with proper engines, and such other instruments as shall be necessary to extinguish fire and preserve the property of the inhabitants of said city from conflagration, and they shall have power to establish and constitute landing places, wharves, docks, and basins in said city at or on any of the city property, and fix the rates of landing, wharfage, and dockage of all steamboats, boats, rafts, and other water-crafts, and of all goods, wares, merchandise, produce, and other articles that may be moored at, landed on, or taken from any landing, wharf, dock, or basin belonging to said city.

SEC. 15. That for the purpose of more effectually securing said city from the destructive ravages of fire, the said city council shall have power and
34 authority, on the application of three-fourths of the whole number of owners and proprietors of any square, or fractional square in said city, to prohibit in the most effectual manner the erection of any building or the addition to any building before erected more than ten feet higher in any such square or fractional square, except the outer wall thereof shall be composed en-

tirely of brick or stone and mortar, and to provide for the prompt removal of any building or addition to building which may be erected contrary to the true intent and meaning of this section.

SEC. 16. That the city council shall have power, and it is hereby made their duty, to regulate by good and wholesome laws and ordinances all taverns, ale, beer, cider and porter shops, and places where spirituous liquors are sold in less quantities than one gallon, and all other houses of public entertainment in the city, and all theatrical exhibitions and public shows, and all exhibitions of whatever name or nature to which admission is obtained on payment of money or any other reward; to license and establish ferries across the Mississippi
35 river from said city to the opposite shore, to fix the rates of the same, and to impose reasonable fines and penalties for the violation of any such laws and ordinances. And the city council shall have full and exclusive power to grant or refuse license to tavern-keepers, inn-holders, retailers of spirtuous liquors by less quantities than one gallon, keepers of ale, porter, cider, beer houses and shops, and all other houses of public entertainment, showmen, keepers and managers of theatrical exhibitions, and other exhibitions for money or other reward, auctioneers for the sale of goods, wares, merchandise, horses and other animals, at public auction; keepers of billiard tables, ball and ten-pin alleys, keepers of ferries from said city across the Mississippi river to the opposite shore; and in granting any such license it shall be lawful for said city council to exact, demand and receive such sum or sums of money as they shall think reasonable and expedient, to annex thereto such terms and conditions in regard to time and place and other circumstances under which such license shall be acted
36 upon, as in their opinion the peace, quiet, and good order of society and said city may require. And for the violation of said terms and conditions as aforesaid, the city council shall have power to revoke or suspend any such license wherever the good order and welfare of said city may require it, in such manner as shall be provided by ordinances.

SEC. 17. That the city council shall have power, and they are hereby authorized, to require and compel the abatement and removal of all nuisances within the limits of said city, under such regulations as shall be prescribed by ordinance, to cause the ground therein, where water shall at any time become stagnant, to be raised, filled up or drained, and to cause all putrid substances, either animal or vegetable, to be removed; and to effect these objects, the said city council may from time to time give orders to the proprietor or proprietors, or his or their agent or agents, and to the non-resident proprietors who have no agent therein, notice by publication in one or more of the newspapers printed
37 in said city, for the period of two weeks, of all or any ground subject at any time to be covered with stagnant water, to fill up, raise or drain such ground at their own expense, and the said city council shall designate how high such ground shall be filled up and raised, or in what manner they shall be drained, and fix some reasonable time for filling up, raising or draining the same; and if such proprietor or proprietors, or agents, shall neglect or refuse to fill up, raise or drain such grounds in such manner and within such time as the said city council shall have designated and fixed, they shall cause the same to be done at the expense of the city, and assess the amount of the expense thereof on the lot or lots of ground so filled up, raised or drained as aforesaid, and place the assessment so made as aforesaid in the hands of the city collector, who shall proceed to collect the same by the sale of such lot or lots, if not otherwise paid in such manner and under such restrictions and regulations as may be prescribed
38 by ordinance: *Provided*, The proprietor or proprietors shall have the privilege and right to redeem such lot or lots within one year after sale, by paying the purchaser or purchasers the amount by them paid, together with ten per cent. interest thereon.

SEC. 18. That the said city council shall have the exclusive power of appoint-

ing supervisors and other officers of streets and highways within the said city; and if collected in money or labor, any sum not exceeding one dollar annually as a road tax, from each and every person liable by law to pay such tax or labor on the highways; they shall have power, whenever the public convenience or safety shall require it, to prohibit hogs, cattle, horses, and all other animals from running at large in the streets, lanes, alleys, commons and other public places in said city; they shall have power to license and regulate all carts, wagons and drays, and every description of two and four wheeled carriages which may
39 be kept in said city for hire, and all livery stables, brokers and loan offices.

SEC. 19. That said city council shall have power, whenever they deem it expedient, to provide for the establishment and support of public schools within said city, and to pass all ordinances necessary and proper for the good government of the same.

SEC. 20. That all money raised, recovered, received or collected, by means of any tax, license, penalty, fine, forfeiture or otherwise, made under the authority of this act, or which may belong to said city, shall be paid into the city treasury, and shall not be drawn therefrom except by order or under the authority of the city council; and it shall be the duty of the city council to liquidate and settle all claims and demands against said city, and to require all officers, agents or other persons, intrusted with the disbursement or expenditure of the public money, to account to them therefor at such time and in such manner as they may direct; and they shall annually publish, for the information of the citizens, a particular statement of the receipts and expenditures of all public
40 moneys belonging to said city, and also of all debts due and owing to and from the same; and the city council shall have power to pass such laws and ordinances as may be necessary and proper to carry into effect the powers herein and by this act granted.

SEC. 21. That every law or ordinance of said city, before it shall be of any force or validity or in any manner binding on the inhabitants thereof or others, shall be signed by the mayor, and published in one or more newspapers in said city at least six days.

SEC. 22. The city council shall have exclusive power to establish and regulate the grades of wharves, streets and banks along the Mississippi river, within the corporate limits of said city.

SEC. 23. And the mayor, within said city, shall have full power and authority, and it is hereby made his duty, at such times as complaint and application shall be duly made before him, to issue all needful process for the apprehension of offenders against any of the bye-laws, ordinances, or regulations of said city, and to hold a court for the trial of all offenders within said city, and the
41 same to fine, imprison, or discharge, as the bye-laws, ordinances and regulations of said city, and the facts of the case, may require; and for that purpose he is authorized and required to cause to come before him, when necessary, a jury of six citizens of said city, who shall be qualified voters of said city; and all such offenders, on conviction, shall be liable for the costs of prosecution, and judgment shall go accordingly, and in case of acquittal, the same shall be paid by the corporation, having first been allowed by the city council, and shall be executed and returned by the marshal within said city council; and until other provision shall be made by the city authorities, it shall be lawful to commit all offenders against said bye-laws, ordinances and regulations, on conviction, to the jail in Lee county; and in case where a portion or all the punishment shall be imprisonment, the keeper of said jail is hereby required to receive such person or persons, on the proper warrant of the mayor, into his custody, in the same manner as in ordinary cases, and all expenses of such imprisonment, in cases where the same cannot be collected from the
42 person or persons convicted and imprisoned, shall be paid out of the city treasury. The fees of the mayor, marshal or jurors, in such cases, shall

be the same as are allowed by statute, in similar cases, for the state of Iowa. The said mayor is also hereby authorized to issue all needful process to arrest any offenders against the criminal laws of this State, and shall proceed to try said person or persons by the same rules that govern justices of the peace.

SEC. 24. The city marshal shall, within the city, in matters of a criminal nature arising under any law of the State, possess the same powers, perform the same duties, and receive the same compensation as either constable in Jackson township; he shall execute and return all process issued by the mayor under this act or any ordinance of the city.

SEC. 25. That all trials for the violation of the bye-laws, ordinances and regulations shall be in a summary manner, and that no person shall, for any offence, be deprived of his or her liberty, or be fined in any sum not less than
43 one nor more than fifty dollars, unless convicted by a jury of six citizens of said city qualified to vote as aforesaid.

SEC. 26. That the said city council shall have the custody, care and management of all personal, real or mixed estate, and other corporate property of said city, and all real, personal and mixed estate, money, funds and resources which from time to time may be owned by or of right belong to said city, with full power to purchase, hold, possess, use and occupy, and to sell and convey the same, for the use and benefit of the said city and the inhabitants thereof: *Provided*, That the city council shall not have power to sell any real estate belonging to the said city of Keokuk, unless the qualified voters thereof, in pursuance of ten days' previous notice, given by order of the city council, and published in one or more of the newspapers printed in said city, setting forth the time, place and purpose of voting, and there shall be a majority of written or printed ballots given expressing their assent thereto.

SEC. 27. The city council shall have power to lay an annual tax upon
44 all property, real and personal, within the limits of the said city, subject to taxation for county revenue, to carry into effect the provisions of this act: *Provided*, That no such tax shall, in any one year, exceed one-half of one per cent. upon the assessed value of the property on which the same is levied.

SEC. 28. The city council shall make out a duplicate of taxes in proportion to the valuation of the property of each individual in said city, on or before the first day of May in each year, to be signed by the mayor, and countersigned by the recorder, which duplicate shall be delivered to the collector of said city, whose duty it shall be to proceed to collect the same within such time and in such manner as the bye-laws or ordinances of the said city shall require, and to pay over the amount of such tax so collected, upon an order of the city council, signed and countersigned in the same manner as is provided for said duplicate: *Provided*, That the said council shall have power, on the complaint of any person aggrieved, to correct or amend any illegal or erroneous
45 assessments, before making out or delivering such duplicate to the collector.

SEC. 29. The collector shall have power to sell personal property, and, for want thereof, to sell real estate, for the non-payment of taxes within said city, giving the purchaser a certificate of such sale, setting forth a brief description of the property so sold, and at what time he will be entitled to a deed, which certificate will be assignable by indorsement thereon; but no real estate shall be sold for the non-payment of such taxes unless the assessment of such tax or taxes shall have been duly notified by publication for at least six consecutive weeks before the day when the said taxes are payable, in some newspaper published in said city, or by notice posted for the same length of time in some public place, in each ward thereof, nor unless the intended sale of such real estate shall have been notified in the same manner and for the same length of time prior to such sale.

SEC. 30. All real estate sold under or by virtue of section twenty-

46 nine may be redeemed by the owner thereof, at any time within two years from the date of the sale thereof, by paying the amount of the taxes for which the same was sold, with cost of advertising and sale, and fifty per cent. interest per annum upon the whole amount of such taxes and costs. But if any real estate so sold remain unredeemed at the expiration of two years from the date of the sale thereof, the collector of said city shall, upon the payment of a fee of one dollar to him by the purchaser of such real estate at such sale, his assignee or legal representative, make, execute and deliver a deed of such real estate to the said purchaser, or his assignee or representative.

SEC. 31. The said city council, whenever they think it expedient, shall have power by ordinance to borrow money on the credit of the city, provided it shall not exceed $20,000, and also to appropriate money, and to provide for the payment of all debts and expenses of the city.

SEC. 32. That the present mayor and aldermen of the city of Keokuk
47 shall have all the power and authority granted in this charter to the mayor and aldermen, and the said mayor and aldermen are hereby authorized to perform all the duties prescribed in this charter, from and after its passage, until their successors in office shall be elected by the citizens of Keokuk and qualified to fill such offices.

SEC. 33. That this act shall be taken and received in all courts, and by all judges, magistrates and other public officers, as a public act, and all printed copies of the same, which shall be printed by and under the authority of the Senate and House of Representatives, shall be admitted as good authority thereof without any other proof whatsoever.

SEC. 34. That all the acts and parts of acts heretofore passed relative to the incorporation of said city of Keokuk, and coming within the purview of this act, be and the same are hereby repealed.

SEC. 35. This act shall take effect and be in force from and after its passage.

Approved December 13, 1848.

48 *Laws amendatory of the charter, and concerning city affairs.*

AN ACT to amend an act entitled "An act to incorporate the city of Keokuk," passed December 13th, 1848.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the city council of said city of Keokuk shall have authority to levy and collect, in addition to the taxes now authorized by law, a special tax of not exceeding one-half of one per cent. per annum upon the property, real and personal, situated in said city and subject to taxation for county revenue, for the purpose of improving the streets, alleys, and wharf of said city, and the payment of the annual interest upon the bonds that have been, or hereafter may be, issued on account of the improvement of said streets, alleys, or wharf: *Provided*, That the question whether any additional tax shall be levied in pursuance of this section shall first be submitted by said city council to the legal voters of said city, at any special election, and if a majority of said legal votes be given for
49 said additional tax, then the same may be levied and collected, as provided in this section; but said tax shall not be levied for more than one year, unless the question of levying said tax be again submitted to the people.

SEC. 2. The special tax aforesaid shall be levied and collected at the same time and in the same manner as the other annual tax levied by said city; and the said city shall have the same rights, powers, and remedies to enforce the collection of the same, by the sale of property or otherwise, as is or may be provided for in other cases relative to the city revenue.

SEC. 3. Said tax shall be payable only in money, and when collected shall, by said city, be set apart and held separate and distinct from the other portions

of the city revenue, as a fund specially pledged for the payment of the annual interest on the bonds aforesaid, and the improvement of the streets, alleys, and wharf of said city; and shall, from time to time, be so applied by said city council, and for no other purpose whatever.

SEC. 4. The city council of said city shall have power to levy and collect a special tax on the lot or lots, or the owner or owners thereof, or any street, lane, avenue, or alley, within said city, for the purpose of curbing, paving, or grading the sidewalks in front of their respective lots, and keeping the said sidewalks in repair, and for the purpose of lighting such street, lane, avenue, or alley.

SEC. 5. The city council of said city shall have the power to levy and collect a special tax on the lot or lots, or the owner or owners thereof, on any street, lane, avenue, or alley, or any part thereof, within said city, according to their respective fronts, for the purpose of paving, planking, or McAdamizing the streets, lanes, avenues, or alleys in front of their respective lots: *Provided*, That in case a special tax be levied on the owners of property in said city, in pursuance of said sections four and five, for the purpose therein specified, no tax, either general or special, shall thereafter be levied on the same property to make the same kind of improvements on any other street, lane, avenue, or alley, or any part thereof, in said city.

SEC. 6. The city council of said city shall have the power to lay out public squares or grounds, streets, lanes, alleys, avenues, and highways, and to alter, widen, vacate, or extend the same—making the persons injured thereby adequate compensation; to ascertain which the city council shall cause to be summoned three disinterested freeholders residing in the city, who, being duly sworn for that purpose, shall inquire into and take into consideration the benefits, as well as the injury, which may accrue, and estimate and assess the damages which would be sustained by reason of the opening, altering, widening, vacating, or extending any street, alley, lane, avenue, highway, public square, or ground, which damages they shall apportion and assess upon the real estate of the persons benefited, in proportion, as nearly as may be, to the benefits resulting to each; all of which they shall return under their hands to the city council of said city, and the assessments so made shall be collected and paid over to the person or persons whose property has been taken for the purposes aforesaid: *Provided*, That any person deeming himself aggrieved by said assessment or apportionment may, in thirty days from the time when such person shall receive notice in writing, by the mayor, of such assessment or apportionment, appeal from said assessment or apportionment to the district court, and said appeal shall be perfected by the injured party giving bond to the satisfaction of the mayor, conditioned for the payment of all costs which may be adjudged against the appellant. It shall be the duty of the mayor to file all proper papers connected with the said appeal, in the district court, on or before the first day of the next term of said court. Said appeal shall be heard and determined as other appeals are heard and determined in said court, and the court shall certify its decision to the city council, by whom the same shall be carried into effect.

SEC. 7. The said city council of Keokuk shall have the power to establish and regulate wharf or wharves in said city, and more particularly to use the whole of Water street for said purpose, and to fix the rates of landing and wharfage of all boats, rafts, water-crafts, goods, wares, merchandise, produce, and other articles that may be moored at, landed, or taken from any landing, wharf, or wharves that have been or may be hereafter established by said city; and in case private property is taken for public use, under the power herein conferred, then the damage and benefits shall be assessed, collected, and paid over in the manner provided in the section in reference to streets, alleys, &c.

SEC. 8. The assessment of taxes made by virtue of the authority contained in the four preceding sections of this act shall be enforced and collected as may be provided by ordinances of the city council of said city.

SEC. 9. All taxes and assessments, general or special, levied or assessed by the city council under this act, or the act to which this is an amendment, shall be a lien upon the real estate upon which the same may be imposed, voted, or assessed, for one year from and after the assessment has been confirmed
54 by the city council, and upon personal property from and after the delivery of the warrant for the collection thereof, until paid, and no sale or transfer shall affect the lien: *Provided*, That in case the collection of any assessment shall be delayed by judicial proceedings, the same shall continue a lien (unless set aside) upon such real estate for the period of one year from and after the final disposition of such judicial proceedings.

SEC. 10. The city council of said city shall have power to make regulations to prevent the introduction of paupers, or of contagious diseases, into the city; also to make quarantine laws, and enforce the same within the city, and not to exceed four miles beyond the city bounds; also to license, tax, and regulate agents or agencies of foreign insurance companies, hawkers or peddlers, and pawnbrokers; also to appoint deputy marshals, watchmen, policemen, and prescribe their duties and powers; also to regulate the measuring and inspecting of lumber, shingles, timber, and all building materials, and appoint one
55 or more inspectors of the same; also to regulate the weighing and place and manner of selling hay; also to regulate the measuring of wood and weighing of coal, and the place and manner of selling the same; also to regulate the inspection of flour, meal, beef, pork, and other provisions; also to establish and regulate markets and other public buildings, and to provide for their erection and location; also to regulate, license, or prohibit butchers, and to revoke their licenses for malconduct in the course of trade, and to regulate, license, and restrain the sale of fresh meats and vegetables in the city.

SEC. 11. The city marshal of said city shall, by virtue of his office, be a constable of Jackson township, with power to serve process and do all acts that constables may lawfully do, and shall receive the same fees as are allowed to other constables by law; and hereafter the said marshal shall be elected by the voters resident within the incorporated limits of the city of Keokuk who are qualified to vote for mayor of said city, at the time and in the same manner that the mayor of said city is elected; and he shall hold his office for the same
56 length of time said mayor holds his office; and shall, before entering upon the discharge of his office, in addition to the bond required of him by the ordinances of said city, execute another bond, and file the same in like manner as constables are required by law to do; and he shall, moreover, take the same oath to discharge the duties of his office, and in the same manner, that constables are required to take.

SEC. 12. In addition to the jurisdiction of the mayor of the city of Keokuk already established in criminal cases, the said mayor shall have power to hear, try, and determine all public offences where the punishment by law does not exceed five hundred dollars fine, or imprisonment in the county jail one year, or where the punishment is by both such fine and imprisonment.

SEC. 13. All proceedings before the mayor of the city of Keokuk, by virtue of the authority conferred in the preceding section, shall be conducted in the same manner and by the same rules and regulations as are or may be pre-
57 scribed by the laws of the State of Iowa in criminal cases before justices of the peace; and persons charged with public offences before the said mayor shall have the same rights and remedies as they are entitled to by law in criminal proceedings before justices of the peace.

SEC. 14. All deeds made to purchasers of lots sold for taxes or assessments by order of the city council in pursuance of this act, or the act to which this is

amendatory, shall be conclusive evidence in all controversies and suits in relation to the right of the purchaser, his or her heirs or assigns, to hold or recover the premises, except it be shown that no tax or assessment was levied on the lot or lots, or that the same was paid before the sales, or that the lot or lots were redeemed in pursuance of the provisions of the charter or ordinances of said city before the execution of the deed or deeds.

SEC. 15. The boundary of the city of Keokuk shall extend to the middle of the main channel of the Mississippi river in front of said city. And
58 whenever any tract of land adjoining said city shall have been laid off into lots, as an addition to said city, and duly recorded as required by law, the same shall be annexed to and form a part of the city of Keokuk.

SEC. 16. The property within the limits of the city of Keokuk shall be exempt from taxation by the county of Lee for road purposes so long as any tax herein authorized for the purpose of grading and improving the streets of said city, equal in amount to the tax levied by the county for road purposes, shall be actually levied, collected, and expended upon said streets.

SEC. 17. The provisos of sections 26 and 31 of the act to which this is an amendment, and all such portions of said act as are repugnant to the provisions of this act, are hereby repealed: *Provided*, as to the said thirty-first section, that no debt above the amount authorized by the said thirty-first section shall be incurred by said council, unless the question of contracting the same shall be first submitted to the people of said city in the same manner as pro-
59 vided in the first section of this act.

SEC. 18. This act shall take effect and be in force from and after its passage.

Approved January 22, 1853.

Act to amend the charter.

AN ACT to amend the charter of the city of Keokuk.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the boundaries of the city of Keokuk shall hereafter be as follows, to wit: Commencing in the middle of the main channel of the Mississippi river at a point where the north and south line between sections thirty-three (33) and thirty-four (34,) of township sixty-five (65) north, of range five (5) west, would cross said channel if extended far enough south to do so; thence due north, along the section line aforesaid, to the northwest corner of section fifteen (15) in said township; thence east, along the line between section fifteen (15) and ten, (10,) to the middle of the main channel of the Mississippi river; and thence
60 down the middle of the main channel of said river to the place of beginning; and the said corporation, council, and all its officers, shall have the same jurisdiction, rights, privileges, and authority over the territory, property, and people within said limits that they now have over the city of Keokuk within its original limits, but no exclusive privileges heretofore granted by the city shall extend to the new limits.

SEC. 2. That the first meeting of the city council of said city after the next board of aldermen shall have been elected, or as soon thereafter as conveniently may be, the two aldermen from each ward shall, in the presence of the council, determine by lot which one of them shall serve for the long term and which for the short term; and the one who is to serve for the long term shall remain in office for two years, and until his successor is elected and duly qualified; and the one who is to serve the short term shall remain in office for one year, and until his successor is elected and qualified; and annually thereafter, at the
61 times now appointed by law for the election of city officers, one alderman shall be elected from each ward to serve for two years and until his successor is elected and qualified.

SEC. 3. That the city of Keokuk shall have the exclusive right to make wharves and collect wharfage, and *and* regulate the wharf rates on the river bank which is added to said city by this act.

SEC. 4. That whenever a vacancy shall occur in the office of mayor, or alderman, recorder, or marshal of said city, unless the same shall occur within thirty days preceding the annual election, the city council shall order an election by the voters of the city or wards, as the case may be, after giving ten days' notice thereof in the usual manner of giving such notices, and the person so elected shall hold his office for the remainder of the term for which his predecessor in office was elected.

SEC. 5. That there is hereby established in and for the city of Keokuk a court called the recorder's court, the judge of which shall be called re-
62 corder, which court shall have, within said city of Keokuk, all the jurisdiction, both civil and criminal, with the rights, powers, and authority of a justice of the peace, and all the judicial authority, rights, and powers now, by law or by city ordinance, vested in the mayor of said city, and that after the said recorder shall be elected and qualified as hereafter directed the mayor of said city shall exercise no judicial functions whatever, but shall be the executive officer of said city, and, as such, shall have the right to remit fines and pardon offences committed against the municipal ordinances and regulations of said city.

SEC. 6. That said recorder shall be elected by qualified voters of said city in the same manner that the mayor of said city is elected, and the first election of said officer shall be held on the third Monday of August next, and he shall hold his office until the next annual election of municipal officers of said city, at which time another election shall be held for said recorder, and in like manner every two years thereafter. The person elected at said election after
63 the first one shall hold office for two years and until his successor shall be elected and qualified.

SEC. 7. That before the said recorder shall enter upon the discharge of his duties as recorder he shall take the usual oath of office, and shall give the bond, with approved security, to perform his duties as justice of the peace, which the law requires of the justices of the peace, to be approved of and filed with the county judge, and also a bond in the penalty of one thousand dollars to the city of Keokuk to perform his duty as judge of the recorder's court, to be approved by the mayor of said city.

SEC. 8. That said recorder shall receive as compensation for his services the same fees that are allowed to justices of the peace for similar services, and such additional compensation as the city council shall, from time to time, by ordinance, determine, but said compensation shall not be increased or diminished so as to affect the person then in office during the time for which he is elected.

SEC. 9. And whereas, at elections regularly held at various times, it
64 was determined by the legal voters of said city of Keokuk that the city council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines & Minnesota Railroad Company, and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mount Pleasant & Muscatine Railroad Company; and whereas, in some instances, the bonds of the city have been issued to pay for the subscription to said stock, and in others they have not been issued; and whereas doubts exist as to the authority of the council to issue said bonds and to provide, by taxation, for the payment of the principal and interest of said bonds: Now, therefore, be it enacted, that the votes of the people of said city, as aforesaid, and the acts of the said city council in accordance therewith, are hereby legalized and made firm, valid, and effectual to all intents and purposes; and that the city council of said city is hereby authorized, empowered, and directed to lay and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any

which may hereafter issue in accordance with any of said votes; and
65 that so much of any act as requires an annual vote to provide for levying the tax to pay the interest on any bonds of said city is hereby repealed. The taxes aforesaid shall be levied and collected in the same manner that the other annual taxes of the city are levied and collected.

SEC. 10. *Be it further enacted,* That the city of Keokuk, included within the boundaries mentioned in this act, shall constitute one permanent school district, not subject to alteration by the school fund commissioner, and shall be subject to the control of the city council of said city, who shall provide for the adequate support and maintenance of common schools in said district; and so much of the code of Iowa as requires regular meetings of each school district on the first Monday in May and October in each year, and so much thereof as requires the election of trustees in each district, is hereby declared inapplicable to said district. The city council of said city shall by ordinance provide for the appointment of a board of education in said district, and may invest
66 in said board the necessary power for the proper care and management of the common schools in said district, the employment of teachers, and the supervision of schools, and to provide for the taking and returning to the proper officer, as required by law, of the number of persons in said district between the ages of five and twenty-one years, and the performance of such other duties as may be necessary for the duties imposed upon said council.

SEC. 11. That said city council shall have the use and control of the school-house in said district, built by and belonging to school district number one, of Jackson township, Lee county, Iowa, and shall have the same power to build other school-houses, and levy taxes therefor, and collect the same, as the legal voters of school districts now have by law, to be collected in the same manner that the other annual taxes of said city are collected.

SEC. 12. That the city council shall have power, by their order on the school fund commissioner of the county of Lee, to receive from him, for the use
67 of said district, all moneys apportioned to said district from the school fund, and in addition thereto shall in each year levy and collect, in the same manner as the other annual taxes are levied and collected, any further sum, not to exceed in any one year two mills on the dollar of the assessment of such year, as may be necessary, with the sum received from the school fund, adequately to provide for the payment of the necessary teachers' wages and incidental expenses in maintaining common schools during the current year.

SEC. 13. That all moneys received by said city from school fund commissioners, or collected in pursuance of any tax levied for school or school-house purposes, shall be paid into the city treasury, and a separate account thereof shall be kept by the treasurer and clerk, and no money shall be drawn therefrom, only to be appropriated to the special purpose for which the same was received, or collected, and shall only be paid on order in which said purposes are stated; and the city council shall provide for the publication
68 once in each year, for the information of all persons, a full statement of all receipts and expenditures for school purposes during the current year, which shall also show the number of schools kept, the number of pupils in attendance, and the time such schools have been kept during the year.

SEC. 14. That the present office of recorder of the city of Keokuk shall hereafter be known and called clerk of the council of the city of Keokuk, and all the laws and ordinances heretofore made and enacted, which relate to the recorder of said city, shall be considered applicable to the clerk of the council.

SEC. 15. That the certificate of the clerk of the council of the proper publication of an ordinance shall be prima facie evidence in all courts of said publication, and his certificate to a copy of an ordinance shall be evidence that it is a true copy of any such ordinance.

SEC. 16. That so much of section twenty-nine of the charter of the city of Keokuk, approved December 15, 1848, as requires publication of the
69 assessment of tax or taxes of said city, either in a newspaper or otherwise, be and the same is hereby repealed.

SEC. 17. That whenever, after the first day of October, A. D. 1856, the city council shall determine to alter or change the established grade of any street or alley of said city, the city engineer shall estimate the cost of said change of grade, and the council shall appoint three commissioners, who shall ascertain the damages to be sustained by individuals, and the damages so ascertained shall be apportioned and assessed upon the real estate benefited by such change of grade, and upon the city of Keokuk, if, in their opinion, it is proper to assess any of it against the city.

SEC. 18. That the sums assessed by virtue of the preceding section upon any lot or part of lot or real estate in the city of Keokuk shall be a lien upon said real estate, and shall be collected by said city council in the same manner as other specified taxes are now or may be collected, and the amount apportioned by said commissioners against the city of Keokuk shall be paid by said city.

70 SEC. 19. That said commissioners shall be duly sworn, before they enter into the discharge of their duties, that they will faithfully fulfil to the best of their ability, and shall make their report and file the same in the office of the clerk of the council. That the mayor shall thereupon cause a list of the lands or lots assessed against them to be published in some newspaper published in said city, for two weeks. Any person or party, including the city of Keokuk, who shall feel aggrieved by such assessments, may take an appeal to the district court of Lee county, by filing a bond with sufficient surety, with the mayor aforesaid, within thirty days after the first publication of said assessment, conditioned to pay whatever sum may be finally assessed on the property in reference to which the appeal is taken, and to perform the judgment of said district court. Whereupon, the mayor shall file said bond, and all the papers in the case, with the clerk of the district court of Lee county aforesaid, which court shall proceed to hear and try such appeal in the usual manner.

71 SEC. 20. That section five of an act to amend the charter of the city of Keokuk, approved January 22, 1853, is hereby amended so as to authorize said council to levy a special tax for grading alleys in the same manner as is therein provided for paving or macadamizing streets and alleys.

SEC. 21. That the city council, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings shall not be erected, or placed or repaired, without the permission of the said council, and to direct that all and any buildings within the limits prescribed shall be made or constructed of fire-proof materials, and so prohibit the repairing or rebuilding of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent. of the value thereof, and to prescribe the manner of ascertaining such damage. The council shall also have power to regulate the construction of chimneys so as to admit chimney-sweeps, and to compel the sweeping and cleaning of chimneys, to prevent
72 the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stove-pipes, ovens, boilers, and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe and secure condition when considered dangerous.

To prevent the deposit of ashes in unsafe places, and to appoint one or more officers to enter into all buildings and enclosures, to discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition.

To require the inhabitants to provide as many fire-buckets, and in such a manner and time, as they shall prescribe, and to regulate the use of them in time

of fire; to regulate and prevent the carrying on of manufactories dangerous in causing or promoting fire; to regulate and prevent the use of fireworks and fire-arms; to compel the owners or occupants of houses or other buildings to have scuttles in the roofs, and stairs or ladders leading to the same.

To authorize the mayor, aldermen, fire wardens, or other officers of
73 said city, to keep away from the vicinity of any fire idle and suspicious persons, and to compel all officers of said city and other persons to aid in the extinguishment of fires and preservation of property exposed to danger thereat.

To organize fire, hook, ladder and axe companies; to provide fire-engines and apparatus for the extinguishment of fires; to appoint, during pleasure, wardens and engineers of the fire department; to appoint, during pleasure, a competent number of firemen and prescribe their duties, and to impose fines and forfeitures upon them for the violations of the rules and regulations prescribed, and generally to establish such regulations for the prevention and extinguishment of fires as the city council deem expedient.

SEC. 22. That all taxes assessed by virtue of any law or ordinance of the city of Keokuk, upon the real estate of said city, shall remain a lien upon said real estate until said taxes are paid to said city or her proper collecting officers, and so much of any law that conflicts with this provision is hereby repealed.

SEC. 23. This act to take effect from and after its publication in the Gate City and Times, published at the city of Keokuk.

74 I hereby certify that the foregoing act was published in the Gate City July 26th, and Keokuk Times, on the 25th day of July, 1856.

GEO. W. McCLEARY,
Secretary of State.

Corporate bonds.

AN ACT legalizing the issue of county, city and town corporation bonds in the counties of Lee and Davis.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee or Davis counties, in the form of a joint or several proposition, whether said counties, city or town, will aid in the construction of one or more railroads, specifying the amount to be given to each, as a joint or several proposition, and the subscriptions made by said county, city or town, and the bonds of said counties, city or towns, issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and
75 valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscriptions shall be a valid lien upon the taxable property of said county, city or town.

SEC. 2. That the county judge, city council, or other proper authority of said county, city or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city or town, shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular or invalid in consequence of the informalities caused by this act.

SEC. 3. That all bonds heretofore issued by Lee and Davis counties, and by any city or town in Lee and Davis counties, for subscriptions to railroads, in pursuance of any vote by the people of said county, city or town heretofore had, shall be valid and of full, legal and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to
76 the vote of the people, or in taking of the vote authorizing the subscription to such railroad, and the issuing of such bonds.

SEC. 4. This act to be in force from and after its publication in the Fort Madison Argus, Fort Madison Plain Dealer, the Keokuk Daily Times, and the Gate City, newspapers published in Lee county, without expense to the State.

That the said bonds and coupons were made and delivered by the mayor of the city of Keokuk to the said railroad company, to enable the said railroad companies to build two certain railroads from the city of Keokuk to the points hereinbefore stated, and for no other purposes; and that the said city of Keokuk received no other consideration for the issue or delivery of the said bonds and coupons except the benefit she expected to derive from the building of said roads, and an amount of stock of said railroad companies equal on its face to the amount of the bonds.

77 If, upon the foregoing facts, the oourt shall find the law for the plaintiff, judgment is to be entered in his favor for forty-five thousand and three hundred and forty-six dollars and ninety-five cents, to draw interest at the rate of six per cent. per annum from the 20th day of May, 1863.

If the court shall be of the opinion that the law is for the defendant, then judgment is to be entered against the plaintiff for costs.

And thereupon the plaintiff filed his motion for judgment upon the special verdict so rendered. And this motion coming on to be argued, it occurred as a question, whether, under the constitution of Iowa, adopted in convention at Iowa city on the 18th day of May, A. D. 1846, the legislature of the State of Iowa had the power to authorize the said municipal corporation, the city of Keokuk, to subscribe for and take stock in a railroad company, and to issue its

78 bonds in payment therefor, and to lay a tax to pay the principal and interest upon said bonds. Upon which point the opinions of the judges were opposed.

And further, upon said argument it occurred as a question, whether, if the legislature possessed said power, they had exercised the same and conferred such authority upon the defendant in this cause prior to the issue of said bonds. Upon which point the opinions of the judges were also opposed.

And further, upon said argument it occurred as a question, whether, if the said city council, at the time of the voting the issue of said bonds, had not due authority of law therefor, the legislature of the State of Iowa had the power, by subsequent enactment, to legalize the acts of the city council of defendant and to make valid and binding said bonds, and to provide for the levy and collection of taxes, and whether they did so. Upon which point also the opinions of the judges were opposed.

And further, upon said argument it occurred as a question, whether the plaintiff, having purchased the said bonds and coupons in open market, before dishonor, was charged with any notice of any defect, illegality or irregularity in their issue, or whether he took them under the law merchant free from any such defects, without actual notice. Upon which point also the opinions of the judges were opposed.

79 And further, upon said argument it occurred as a question, whether, under the constitution and laws of the State of Iowa appertaining to this cause, the proper officers of the city of Keokuk had authority to make and issue the bonds and coupons declared on, and to deliver the same to the said railroad companies, and whether the said city is holden to pay the same.

And further, upon said argument it occurred as a question, whether, under the constitution and all the laws of the State of Iowa in force at the time of the issue of said bonds, and those subsequently enacted, the plaintiff should have judgment for said sum of forty-five thousand three hundred and forty-six dollars and ninety-five cents, ($45,346 95.) or the defendant should have judgment for costs. Upon which question also the opinion of the judges was opposed.

Whereupon, on motion of the plaintiff, by his counsel, that the points
80 upon which the disagreement hath happened may during the time be stated under the direction of the judges and certified under the seal of the court to the Supreme Court, to be finally decided,

It is ordered by the court that the foregoing state of the pleadings and statement of the facts, which is made under the direction of the judges, be certified under the seal of the court, according to the request of the plaintiff by his counsel, and the law in such case made and provided.

81 UNITED STATES OF AMERICA, *District of Iowa.*

I, W. G. Woodward, clerk of the circuit court of the United States in and for the district of Iowa, do hereby certify that the foregoing eighty-one pages of writing contain a full, true and complete copy of the state of the pleading, the statement of facts and of the proceedings in the above-named cause, as they remain of record on the records of the said circuit court.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court, this 25th day of July, A. D. 1863.

W. G. WOODWARD,
Clerk of the Circuit Court of U. S. for Iowa.

Fee for transcript	$16 74
Certificate and seal	35
Revenue stamp	10
	$17 19

82 *Bond.*

THE UNITED STATES OF AMERICA, *District of Iowa.*

United States circuit court, Nov. term, A. D. 1862.

Know all men by these presents, that we, Evans Rogers as principal, and S. V. White, of the county of Polk, and State of Iowa, are held and firmly bound unto W. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, in the sum of five hundred dollars, to be paid to him, his executors, administrators, or assigns. To which payment well and truly to be made we do bind ourselves, our heirs, executors, and administrators, and each of them, jointly and severally, firmly by these presents.

Witness our hands this eighth day of September, A. D. 1862.

The condition of the above obligation is such, that whereas Evans Rogers has this day, to wit, the date above mentioned, instituted a suit in the said circuit court of the United States for the district of Iowa against the city of Keokuk, now if the said plaintiff, his executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against the said plaintiff in the prosecution of said suit, and shall well and truly discharge all costs that may accrue in this behalf if judgment shall pass against the said defendant, and the costs aforesaid fail to be collected of the said defendant, and all costs that may accrue on failure of the plaintiff to prosecute said suit to effect, then this obligation to be void, otherwise to remain in full force and effect.

EVANS ROGERS, [SEAL.]
By S. V. WHITE.
S. V. WHITE. [SEAL.]

This bond is examined and approved by me this 22d Sept., 1862.

W. G. WOODWARD, *Clerk Circuit Court U. S.*

Filed December 7, 1863.

Supreme Court of the United States.

EVANS ROGERS, Plaintiff,
vs.
THE CITY OF KEOKUK, Defendant.

No. 168.
Dec. Term, 1864.

On Certificate of Division.

Statement of the Case.

This case is here on certificate of division of opinion between the Judges of the Circuit Court, for the District of Iowa.

The plaintiff sued upon interest coupons, attached to certain bonds, dated 1st of January, 1856, signed by the Mayor and Recorder of Keokuk, issued to the Keokuk, Fort Des Moines and Minnesota Railroad Company, for subscription to its stock, under an ordinance of the City of Keokuk, passed 20th November, 1855; and also sued upon coupons attached to other bonds signed in the same manner, is sued to the Keokuk, Mount Pleasant and Muscatine Railroad, for subscription to its stock, under ordinance passed 5th February, 1856—both sets of bonds purporting to be issued under authority of an Act of the General Assembly of the State of Iowa, amending the charter of Keokuk, approved 22d January, 1853. Both sets of these bonds were assigned in blank by the railroad companies.

The answer of the defendant need not be stated, for there was no issue of fact made, the only questions arising in the case are upon the construction of the laws of Iowa, and the legal effect of certain facts agreed, as follow:

1st. The plaintiff purchased the coupons sued on in open market, for value, before maturity.

2d. The coupons were attached to bonds issued as above stated, and executed by the proper officers of the City of Keokuk, in accordance with an ordinance of the city, after a vote as prescribed by law, and were delivered to said railroad companies. That said railroad companies are private corporations, created for pecuniary profit, and for the construction of railroads without the limits of the city. That the bonds were delivered by the Mayor of Keokuk to said companies, to enable them to build two railroads from the City of Keokuk to the termini of said roads, and the City received no other consideration for the bonds than the benefit she expected to derive from the building of the roads, and the stock received therefor.

The laws applicable to these facts were as follows:

1st. "An Act to incorporate the City of Keokuk," approved December 13th, 1848. The 31st section of this law is:

"The said City Council, whenever they think it expedient, shall have power by ordinance to borrow money on the credit of the city, provided it shall not exceed $20,000; and also to appropriate money, and to provide for the payment of all debts and expenses of the city.

2d. "An Act to amend an Act entitled an Act to incorporate the City of Keokuk, passed December 13th, 1848," approved January 22d, 1853, the 17th section of which says: "The provisos of sections 26 and 31 of the Act to which this is an amendment, and all such portions of said Act as are repugnant to the provisions of this Act, are hereby repealed: *Provided*, As to the said 31st section, that no debt above the amount authorized by the said 31st section shall be incurred by said Council, unless the question of contracting the same shall be first submitted to the people of said city in the same manner as provided in the 1st section of this Act."

3d. "An Act to amend the charter of the City of Keokuk," which took effect July 26th, 1856, the *9th section* of which is as follows:

SEC. 9. And whereas, at elections regularly held at various times, it was determined by the legal voters of said City of Keokuk, that the City Council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company, and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mount Pleasant and Muscatine Railroad Company; and whereas, in some instances, the bonds of the city have been issued to pay for the subscription of said stock, and in others they have not been issued; and whereas doubts exist as to the authority of the Council to issue said bonds, and to provide, by taxation, for the payment of the principal and interest of said bonds: Now, therefore, be it enacted, that the votes of the people of said city, as aforesaid, and the Acts of the said City Council in accordance therewith, are hereby legalized and made firm, valid and effectual to all intents and purposes; and that the City Council of said city is hereby authorized, empowered, and directed to lay and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any which may hereafter issue in accordance with any of said votes," &c.

4th. "An Act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis," approved 29th January, 1857, being chapter 258, p. 447 of Session Acts of 1857, in these words:

SEC. 1. Be it enacted by the General Assembly of the State of Iowa, that all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee or Davis counties, in the form of a joint or several proposition, whether said counties, city, or town, will aid in the construction of one or more railroads, specifying the amount to be given to each, as a joint or several proposition, and the subscriptions made by said county, city, or town, and the bonds

of said counties, city, or towns, issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued, in pursuance of such votes and subscriptions, shall be a valid lien upon the taxable property of said county, city, or town.

SEC. 2. That the county Judge, City Council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town, shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid in consequence of the informalities caused by this Act.

SEC. 3. That all bonds heretofore issued by Lee and Davis counties, and by any city or town in Lee and Davis counties, for subscriptions to railroads in pursuance of any vote by the people of said county, city, or town heretofore had, shall be valid and of full, legal and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to the vote of the people, or in taking of the vote authorizing the subscription to such railroad, and the issuing of such bonds.

Also two Acts approved 25th January, 1855, which are chapters 128 and 146 of the Acts of the 5th General Assembly, pages 142 and 219—as follows:

By the first of these it is enacted: "That whenever any (railway) company shall have received, or may hereafter receive, the bonds of any city or county upon subscription of stock, by such city or county, such bonds may have interest at any rate, not exceeding ten per cent., and may be sold by the company, at such discount as may be deemed expedient."

By the second it is enacted: "That in all cases where county, or town, or city incorporations, have or may hereafter become stockholders in railroads, or other private companies or incorporations, it shall not be lawful for the

county Judges, Mayors, or other agents of such cities or counties, to issue the bonds of their counties or cities until they are satisfied that the contemplated improvements will be constructed through or to their respective cities or counties, within thirty-six months from the issuing and delivery of said bonds; and the proceeds of such bonds shall, in all cases, be expended within the limits of the county, in which said city may be situated: *Provided*, That nothing in this Act shall in any way affect corporation rights for any contracts or subscriptions heretofore made with any railroad company or corporation, for the issuing of county corporation bonds."

Upon the foregoing facts, stated in a special verdict, and law, the plaintiff moved for judgment, on argument of which motion this question occurred:

1st. Whether under the Constitution of Iowa of 18th May, 1846, the legislature could authorize the defendant to subscribe to the stock of a railroad company, and issue its bonds in payment thereof?

Upon which point the opinions of the Judges were opposed.

2d. And also this question: Whether the legislature had conferred such power upon the defendant?

3d. And also this question: Whether the legislature had power to pass said Act, legalizing the Acts of the City of Keokuk?

4th. And also this question: Whether the plaintiff having purchased the bonds in open market, before dishonor, he was charged with notice of any defect, illegality, and irregularity in their issue?

5th. And also this question: Whether under the Constitution and laws of Iowa, the City of Keokuk had authority to make these bonds and deliver the same to the railroad companies?

6th. And also this question: Whether under the Constitution and laws of Iowa, in force at the time of the issue of the bonds, and those subsequently enacted, the plaintiff was entitled to judgment?

Argument.

To maintain the validity of the bonds, the plaintiff relies upon the following points and authorities:

If, by the law of Iowa, in force at the time the bonds were issued, the City of Keokuk was authorized to subscribe stock to a railroad, and issue its bonds in payment therefor, all the points certified in this Court are answered by that single proposition.

Whatever may be considered the meaning of the 31st section of the Act of December 13th, 1848, and of the 17th section of the Act of 22d January, 1853, standing by themselves, when to these Acts is added the two statutes of 25th January, 1855, the construction of the whole law as it thus stands, has already been decided by this Court in case No. 81, 1 Wallace, 220, Gelpcke *vs.* The City of Dubuque. In that case the city charter did not specially authorize the city to subscribe to the railroads, it simply authorized the city "to borrow money for public purposes;" this language, in connection with the Acts of 1855, this Court held to confer from the first the power to subscribe to railroads.

The Court says, p. 221: "In this Act it is clearly implied that cities have authority to subscribe for railroad stock, and to issue their bonds in payment of it. What is implied in a statute is as much a part of it as what is expressed.

Considering the subject, in the light of these Acts, we entertain no doubt that the city possessed the power to issue these bonds."

The legislature specially declares its interpretation of the previous Acts in the 9th section of the amendment of the

charter, which took effect 26th July, 1856, in which it recites the subscriptions made to these railroads by Keokuk, and the issuing of the bonds, and that doubts exist as to the authority of the Council, and legalizes all of the Acts so done by the City Council.

Finally the Act of 29th January, 1857, chapter 258, legalizes all Acts of the City of Keokuk, and of Lee county, in relation to the subscription to stock and issuing of bonds to these railroads.

The validity and effect of these Acts have been decided by the Supreme Court of Iowa in three cases.

6 Iowa, 304, McMillen *vs.* Bayles, County Judge.

6 Iowa, 391, McMillen *vs.* County Judge and Treasurer of Lee county.

10 Iowa, 166, Stokes *vs.* County of Scott.

In 6 Iowa, 391, at p. 392 the Court say:

"I think but one question remains to be considered in this case; and that is whether the legislature had the power to pass the Act of January 29th, 1857, and did it have the effect of legalizing the vote taken?"

The Court then refers to the case in 3 Iowa, 311, deciding the vote in Lee County to have been irregularly held, which led to the enactment of the law, and adds, (p. 393),

"I cannot see how it can change the matter, whether the power is given beforehand, or the informality cured subsequently."

"The right of the Legislature to pass such laws, retrospective in their character, cannot, as I think, be seriously questioned * * (p. 394.) I am of the opinion that it was perfectly competent for the Legislature to legalize and make valid any informality or defect in the vote taken."

The law of the State bearing upon this subject is found in six laws, namely, the three acts of incorporation, the two acts of 25th January, 1855, and the general curative act of 29th January, 1857.

In construing statutes, this Court says, in the United States and Freeman, 3 How, 564:

"The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration, in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law. Doug. 30; 2 Term Rep. 387, 586; 4 M. & S., 210. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute: Lord Raym. 1028; and if it can be gathered from a subsequent statute *in para materia*, what meaning the Legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. Morris *vs.* Mellen, 6 B. & C., 454; 7 id., 99. Wherever any words of a statute are doubtful, or obscure, the intention of the Legislature is to be resorted to, in order to find the meaning of the words. Plowd. 57.

A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter. Plowd. 366 (see also Sedgwick on Laws, 237, et seq.)

The acts of 25th January, 1855, and 29th January, 1857, have also been construed by this Court; 1 Wallace, 390. Meyer *vs.* Muscatine; 1 Wallace, 220, case 81. Gelpeck *vs.* Dubuque.

The power of the Legislature to pass curative statutes retroactive in their operation, and the effect of such statutes was most thoroughly argued and presented to the Supreme Court of Iowa by Mr. J. M. Beck, in the case of McMillen *vs.* Bayles, County Judge, 6 Iowa, 304. In that argument the authorities on this question are elaborately examined. The decision of the Supreme Court of Iowa will be found on examination to approve the points made in the argument, and to concur with the cases cited.

F. A. DICK,
Of Counsel for the Plaintiff.